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Carol W. Burton
HOGAN & HARTSON L.L.P.
ONE TABOR CENTER, SUITE 1500
1200 SEVENTEENTH STREET
DENVER, CO 80202

In re Application of MEHRABI
Application No.: 10/520,771
PCT Application No.: PCT/AT00/00252
Int. Filing Date: 21 September 2000
Priority Date Claimed: 24 September 1999
Attorney Docket No.: TOMK0004
For: USE OF ALPROSTADIL (PROSTAGLANDIN
E1) FOR PRODUCING A MEDICAMENT FOR
ANGIONEogenesis

DECISION ON PETITION
UNDER 37 CFR 1.137(b)

Applicant's "Petition For Revival Under 37 CFR 1.137(b)," filed in the United States Patent and Trademark Office on 10 January 2005 is DISMISSED without prejudice as discussed below.

BACKGROUND

On 21 September 2000, applicant filed international application PCT/AT00/00252. The international application claims a priority date of 24 September 1999 and designates the United States. A copy of the international application was communicated from the International Bureau to the United States Patent and Trademark Office on 05 April 2001. The deadline to pay the basic national fee was thirty months from the priority date, that is 24 March 2002. The application became abandoned at midnight 24 March 2002 for failure to pay the basic national fee.

On 10 January 2005, applicant filed the instant petition for revival accompanied by, *inter alia*, the requisite basic national fee as required by 35 U.S.C. 371(c)(1), a copy of the international application as required by 35 U.S.C. 371(c)(2), the petition fee of \$1500, and a declaration of the applicant.

DISCUSSION

A petition to revive an abandoned application under 37 CFR 1.137(b) must be filed without intentional delay from the time the application became abandoned and/or applicant first became aware of the abandoned status of the application. A petition under 37 CFR 1.137(b) must be

accompanied by (1) a proper reply, (2) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, (3) the petition fee required by law, and (4) a terminal disclaimer and fee (if the international application was filed prior to June 8, 1995). A payment of the basic national fee constitutes a proper reply for entry into the national stage.

The submission of the national fee and the copy of the international application satisfies 37 CFR 1.137(b)(1). The payment of the petition fee satisfies the requirement under 37 CFR 1.137(b)(2). A terminal disclaimer is not required because the application was filed on or after 08 June 1995.

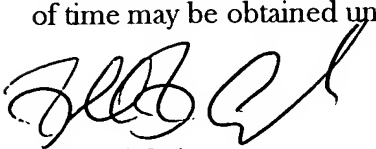
Applicant's petition states that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional". Applicant's declaration incorrectly lists the priority date as 29 September 1999 rather than 24 September 1999, and states that the failure to file a U.S. national application was "at all times on and after March 29, 2002, unintentional". The due date for the reply, however, was 24 March 2002. Thus, applicant's statement in the declaration regarding the unintentional delay leaves a time period of five days unaccounted for and therefore does not address the entire delay from the due date for the reply until the filing of a grantable petition. The declaration does not satisfy the requirements of 37 CFR 1.137(b)(3) because the statement in the declaration does not indicate that the delay in the period from 24 March 2002 until 29 March 2002 was unintentional.

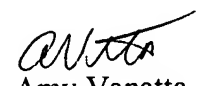
CONCLUSION

For the above reasons, the petition filed on 10 January 2005 under 37 CFR 1.137(b) is DISMISSED without prejudice.

The application remains ABANDONED.

If reconsideration on the merits of this decision is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.137(b)." Extensions of time may be obtained under 37 CFR 1.136(a).


Richard Cole
PCT Legal Examiner
PCT Legal Administration


Amy Vanatta
Detaillee
PCT Legal Administration
Telephone: 571-272-6095
Facsimile: 571-273-0459